he has violated; he can not remain a member of the bar of this state, and, while such member, indulge in such practices. In view of the representations of respondent that 'he does not desire to violate either in the letter or in the spirit—either really or seemingly—canon 27 or any other canon of the Code of Ethics,' and that 'if this court * * * shall deem that the facts of his being an attorney at law * * * make it improper that he shall advertise his collection business, respondent will cheerfully accept and faithfully abide by the rule of guidance thus laid down,' we are of the opinion that the proper disposition of this proceeding is to express our emphatic disapproval of the advertising and soliciting methods of respondent and severely censure him therefor. Upon his refraining from further use of such methods, no further action will be taken. Respondent and the bar generally are warned that such conduct is not to be tolerated, and repetition thereof will lead to disbarment."

Banks and Banking—Collections — Negligence — Evidence. — In American Nat. Bank *v.* Bank of Bandon, in the U. S. Circuit Court of Appeals, Ninth Circuit (March, 1917, 240 Fed. 624), it was held that in an action by a bank to which a draft was payable against its correspondent bank to which it had indorsed the draft for collection, to recover damages for the latter's negligence in notifying the payee bank that the draft had been accepted by the drawee, when in fact acceptance had been refused, and in failing to protest the draft and to notify the payee bank for ten days thereafter, during which time cargo of lumber which the payee might have attached was shipped by the drawer, evidence that the drawer was insolvent at the time and largely indebted to the drawee, and that if the lumber had been attached the drawee could have filed a petition in bankruptcy against the drawer as was done within a short time, is not admissible to show that the payee bank lost nothing because of its correspondent's negligence, since it cannot be assumed that the drawer, though insolvent, could not have secured the money to meet the draft in some way. The opinion concludes:

"It may be that if the Bank of Bandon had attached the lumber before it was shipped to San Francisco, the Dollar company would have forced the lumber company into bankruptcy, and it may be that if it had done so any advantage accruing to the Bandon Bank by reason of such attachment would have been lost. But the law of mercantile transactions will not permit such an hypothesis to be constructed by the drawee of the draft for the purpose of relieving the collecting bank of performing its legal duty of presentation and protest, as required by the statutes of the state in which the draft is to be paid (secs. 3155, 3224-3228 of the Civil Code of California). The specific facts here are that when the lumber company drew the

draft, and the Bandon Bank put the amount of it, less a small sum, to the credit of the lumber company, the lumber company was carrying on its business and was in the good credit which it had theretofore enjoyed with the Bandon Bank, which was advised of presentation and acceptance and never knew at any time prior to December 29 that the drawee had in fact refused to accept the draft. The situation, therefore, was not one where the collecting agent was negligent merely in not duly presenting and then notifying the forwarding bank. The American Bank did duly present the draft and did promptly notify the Bandon Bank; but, as the notification sent was that the Dollar Company had accepted the draft, the Bandon Bank in its usual course was fully justified in acting in accord with the advice of acceptance and paying out the amount of the draft upon the checks of the lumber company. Not only nondirection, but also misdirection, is attributable to the American Bank. The lumber company was a going business concern before the notice of dishonor was sent, and evidence that it was in fact without sufficient assets to pay its debts or even insolvent was no excuse for the neglect of the American Bank. This is so because the effect of the mistake and negligence of the American Bank was to mislead the Bandon Bank and to deprive it of the right of opportunity to seek prompt recourse against the lumber company, whereby it might have obtained payment or security from the lumber company before the date when it was forced into involuntary bankruptcy. Chitty on Bills (12th ed., *449) lays down the rule as follows:

'The death, known bankruptcy or known insolvency of the drawee or acceptor or maker of a note, or an offer of composition by the acceptor not acceded to with a declaration, in the presence of the drawer and holder, that he (the acceptor) had not and should not provide for the bill, or his being in prison, or the notorious stopping payment of a banker, constitute no excuses, either at law or in equity or in bankruptcy for the neglect to give due notice of non-acceptance or non-payment, because many means may remain of obtaining payment by the assistance of friends or otherwise of which it is reasonable that the drawer and indorsers should have the opportunity of availing themselves, and it is not competent to the holders to show that the delay in giving notice has not in fact been prejudicial.'

In Granite Bank *v.* Ayers (16 Pick., Mass., 392, 28 Am. Dec. 253), where misinformation was given to a notary as to the residue and financial standing of the makers of a note, it was held to be no excuse for want of presentment and demand that the promisors had failed in business.

In Citizens' National Bank *v.* Third National Bank (19 Ind. App. 69, 49 N. E. 171) the Appellate Court of Indiana considered the question whether mere insolvency of the drawer of a draft is a suffi-

cient answer to show that the indorsee of such drawer would not be damaged by the negligence of its collecting agent in not duly presenting and giving notice. The court held that although the drawer by reason of want of funds and want of right to draw remains liable on indorsement without presentment, demand, or notice, and the indorsee's right of recourse still exists, there was still a liability of the negligent collection agent, because by neglecting to present for acceptance and giving notice, the collecting agent has deprived the indorsee of the prompt notice which would or might have enabled him to have prompt recourse on the indorser, thus giving him an opportunity or chance to have obtained payment or security from his immediate indorser before such indorser's failure, assignment or bankruptcy. The court said:

'The law does not permit the collecting agent to decide in advance that, because the drawer may have in fact been insolvent, therefore the indorser, from pursuit of his rights of recourse, would not have availed. If the collecting agent fails to give his principal and indorsee the benefit of such choice, he is liable.'

To like general effect may be cited Hawley Dodd & Co. *v.* Jette & Clark (10 Or. 31, 45 Am. Rep. 129); Grimes *v.* Tait (21 Okl. 361, 99 Pac. 810); Welch *v.* Taylor Mfg. Co. (82 Ill. 579); Smith *v.* Miller (52 N. Y. 545)."

Corporations—Deduction of Income Tax—Liability to Holder on Bonds Promised Free of Taxation.—In Urquhart *v.* Marion Hotel Co., in the Supreme Court of Arkansas (April, 1917, 194 S. W. 1), it was held that a clause in bonds issued by a corporation promising payment without deduction from either principal or interest for any tax or taxes which the corporation may be required to pay or retain therefrom under any present or future law, the corporation agreeing to pay such tax, does not require the corporation to pay a bondholder's federal income tax, the amount of which it had retained from the payment of interest on the bonds, since that tax is not a tax on the bond, but a personal obligation of the bondholder, arising out of her possession of an income in excess of her exemptions. The court said in part:

"Pursuant to the requirement of the Federal Income Tax Laws, she (appellant) filed her certificate in which she declared that:

'I do not now claim exemption from having the normal tax of 1 per cent. withheld from said income by the debtor at the source.'

—but, notwithstanding this certificate, she demanded payment of the full amount of interest due, without deduction of the 1 per cent., the demand therefor being based upon the theory that the corporation, and not herself, was liable for the tax. It is argued that the very terms of the bond itself required the company to pay any tax, or taxes, which it (the company) might be required to retain. We